

Sears, Roebuck & Co. and Local 32, Office & Professional Employees' International Union, AFL-CIO, Petitioner. Case 4-RC-17114

August 22, 1991

DECISION, DIRECTION, AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

The National Labor Relations Board, by a three-member panel, has considered determinative challenges to an election held November 10, 1989, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 153 for and 140 against the Petitioner, with 27 challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs and has adopted the hearing officer's findings¹ and recommendations only to the extent consistent with this Decision, Direction, and Order.

We adopt, for the reasons stated by the hearing officer in his report, the hearing officer's recommendation that the ballots cast by employees Marianne Clark, James Donaldson Jr., James Donaldson III, Annette Dunleavy, Mary Beth Fine, Boyd Keele, Cheryl Knowles, Jeffrey Lake, Sue Mark, Sharon Pratt, Margurite "Peggy" Regal, Linda Vasquez, Mary Lou Watkins, Augustus "Gus" Weaver, and Susan Williams be overruled and that the challenge to the ballot cast by employee Robert Ketscheck be sustained.² For the reasons stated below, we find merit in the Employer's exceptions to the hearing officer's findings that Paul Blankenship, Alice Brown, George Maul, Rose Maul, Susan McGowan, William Weaver, Bernie Welcz, and Karen Wimberg are supervisors within the meaning of Section 2(11) of the Act and accordingly

find that the challenges to their ballots should be overruled.

Initially, we note that the eight individuals whose ballots were challenged by the Petitioner and found to be supervisors by the hearing officer did not testify at the hearing. Thus, the record on which the hearing officer relied consisted primarily of the fragmented testimony of employees and other individuals claiming familiarity with the job duties of the eight individuals. Although we accept the hearing officer's credibility findings for individuals are supervisors within the meaning of Section 2(11) of the Act. See *Sears, Roebuck & Co.*, 292 NLRB 753 (1989). We note in this regard that conclusionary statements made by witnesses in their testimony, without supporting evidence, does not establish supervisory authority. See *American Radiator Corp.*, 119 NLRB 1715, 1718 (1958).

We further note that the hearing officer acknowledged that none of the eight individuals had the authority to hire, fire, transfer, suspend, lay off, or recall employees, to evaluate, promote or reward employees, or to adjust grievances. Finally, we note that these eight individuals filled positions in the hierarchical structure of the Employer³ similar to other challenged voters who the hearing officer found not to be supervisors.⁴ We now turn to an examination of the status of each of these individuals.

1. The status of Paul Blankenship

Paul Blankenship is a sales leader in the men's department under the direction of Checklist Manager John Dempsey. Blankenship is an hourly paid, part-time employee and earns \$5.82 an hour, a wage less than that earned by two employees in his department. He is not eligible for commissions. Most of Blankenship's worktime is spent in connection with the presentation of merchandise, covering the sales floor, approving merchandise returns, and completing the paperwork related to merchandise markdowns. Blankenship also writes up and signs schedules for the men's and shoe departments.⁵

Based on Blankenship's scheduling of employees and on employee Joanne Yost's testimony that he could approve schedule changes, grant days off, and permit employees to report to work late, the hearing officer found Blankenship to be a supervisor. We disagree.

As to the scheduling of employees, the hearing officer found that Dempsey determined the number of

¹ The Petitioner has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We find no basis for reversing the findings.

² In the absence of exceptions, we adopt, pro forma, the hearing officer's recommendation that the challenges to the ballots cast by employees Harrison McKoy, Melissa Payran, and Susan Waters be overruled.

Member Cracraft notes that the Petitioner has excepted to the hearing officer's recommendation that the challenge to Mary Beth Fine's ballot be overruled in accordance with the parties' stipulation that she was employed prior to the eligibility cutoff date and was eligible to vote. In its answering brief, the Employer states that the parties also stipulated that Melissa Payran is an eligible voter and that her ballot must be treated the same as Fine's. Member Cracraft observes that the parties' stipulation with respect to Fine is inconsistent with the facts in the record and that the Employer alleges that the facts with respect to Payran are essentially identical. In Member Cracraft's view, whether to accept the parties' stipulation in these circumstances raises a difficult issue. Compare *Red Lion*, 301 NLRB 33 (1991) (Board affirms hearing officer's rejection of parties stipulation that lacks factual basis). Accordingly, Member Cracraft would not rule at this time on the challenges to the ballots of Mary Beth Fine and Melissa Payran and would direct the Regional Director to transfer this case back to the Board for a ruling on these challenges if, after the remaining challenged ballots which have been overruled are opened and counted, these two challenged ballots remain determinative.

³ The Employer operates a department store in Mays Landing, New Jersey, headed by General Manager Robert Flippen. Reporting to Flippen are approximately 20 checklist managers, each of whom is responsible for the management of individual departments. The parties stipulated that the checklist managers are supervisors within the meaning of the Act.

⁴ As noted above, we have adopted those findings for the reasons set forth by the hearing officer.

⁵ Manager Dempsey is also in charge of the shoe department.

sales employees to cover the selling floor daily and the number of hours a week each employee would work, and gave these instructions to Blankenship, who then prepared the weekly schedule. The hearing officer concluded that because the Employer's budgeting for departments changes monthly, affecting the number of sales employees scheduled to work, that because the availability of employees also changes, and that because there was no indication in the record that Blankenship presented the finished schedule for Dempsey's review and approval, Blankenship's scheduling of employees involved the nonroutine assignment of work.

We find that the hearing officer's conclusion depends on assumptions for which there is no support in the record. Most significantly, there is no record evidence that employee availability is a major factor in the scheduling of employees or that Blankenship independently resolves questions regarding the scheduling of employees. In this regard, there was no testimony that employees' work schedules or availability changed significantly from week to week or that in writing out the schedule, Blankenship regularly had to resolve conflicts or problems concerning the availability of employees. Contrary to the hearing officer, we do not find Yost's testimony that she requested a reduction of hours on her return to work from maternity leave evidence of a pattern of weekly changes in employees' availability to work. Further, Yost's testimony undercuts the hearing officer's finding that Blankenship independently resolves scheduling problems that arise. Yost testified that she made her request for reduced hours to Dempsey, and thus Blankenship apparently scheduled Yost's hours pursuant to Dempsey's decision.

As to the hearing officer's finding that Blankenship could approve schedule changes, grant days off, and permit employees to report to work late, the hearing officer relied exclusively on the conclusionary testimony of Yost,⁶ which he characterized as lacking in details and specifics, making it "difficult" to make a finding in regard to what Blankenship did in practice approve.

The hearing officer disregarded Yost's testimony, noted above, that she asked Dempsey, not Blankenship, to reduce her hours and that if she had to miss a day of work, she would leave a message with the personnel department.⁷ Given this testimony, and in the absence of any specific evidence showing

that Blankenship approved schedule changes, granted time off, and permitted employees to report to work late, we find that the record fails to support the hearing officer's findings in this regard.

For these reasons, we find, contrary to the hearing officer, that Blankenship neither possessed nor exercised any indicia of supervisory status. See *Mack's Supermarkets*, 288 NLRB 1082, 1086-1087 (1988). Accordingly, we overrule the challenge to his ballot.

2. The status of Alice Brown

Alice Brown is the lead audit clerk in the Auditing Department. She is a full-time employee and earns \$10.71 an hour, a higher wage than any other auditing department employee. Brown works under Carol Feneli, the Store's retail general office (RGO) manager, who is also in charge of the personnel department, the RGO secretaries, and the store's switchboard employees. Feneli has assigned each auditing department employee a specific function; however, each employee is cross-trained and can fill in if another employee is out of the office. Brown is assigned local purchases, end-of-the-month reports, internal audit sheets, sales employees' commission corrections, quarterly cash room reconciliations, and charges from other Sears units. Brown has the longest service of the auditing department employees. She is considered to be the most versatile of the department employees and is the one to whom the other employees turn if they have questions. Brown is also involved in writing the schedule for the auditing department employees. As is the procedure in other departments, General Manager Robert Flippen and Feneli agree as to the budget for the departments in Feneli's charge, and Feneli decides coverage and the number of hours each employee will work. Thereafter, Brown prepares the schedule in accord with Feneli's determination and the individual employee's day and hour preferences. The hearing relied solely on Brown's role in the scheduling process in finding that Brown was a supervisor within the meaning of Section 2(11) of the Act.

The hearing officer acknowledged that because some of the auditing department employees worked full time and because all the employees started work between 7 and 8 a.m. and left in the early afternoon, scheduling "is not all that difficult." However, noting that employees have varying starting times, quitting times, and days off, the hearing officer found that Brown's preparation of the schedule involved an "element of discretion here that requires independent judgment to balance the needs of the Auditing Department with the scheduling requests of employees." In this regard the hearing officer noted that there was nothing in the record to suggest that Brown did not have the authority to determine if a part-time employee would work 4

⁶ Yost testified as follows:

Q. If you ever had to change your schedule or come in late or leave early or take a day off, who would you ask about these things?

A. You would ask [Blankenship].

Q. And would he say yes or no?

A. Paul was pretty easy. He would just like, you know do it for you.

⁷ Yost testified that if she needed to leave work early and if a supervisor was not available, she would report to the personnel department.

days a week or 5 days a week or that Feneli approved the work schedule after Brown prepared it.

Contrary to the hearing officer, we find that the record does not support a finding that Brown's role in scheduling the auditing department employees involves the exercise of independent judgment. Feneli, not Brown, decides how many hours each week each employee will work, and as is true in other departments, described above, there is no evidence to suggest that employee availability changes from week to week. To the contrary, the one schedule introduced into evidence suggests that scheduling of these employees is routine. Thus, the schedule indicates that all full-time employees start work at 7 a.m. and quit work at 3:30 p.m., all part-time employees start work between 7:30 and 8:30 a.m., and that except for two employees, all employees work Monday through Friday. There is no evidence that any changes to the weekly schedule are resolved by Brown rather than Feneli. As we have noted *supra*, the hearing officer's findings to the contrary are based on supposition without supporting evidence. In sum, we find the record insufficient to establish that Brown exercises independent judgment in the scheduling of employees, and we accordingly overrule the challenge to her ballot.

3. The status of George Maul

George Maul is lead customer service clerk in the "4C" department⁸ under Checklist Manager George R. Smith Sr. and Nancy Haywood as his "backup."⁹ Maul is a full-time employee and earns \$8.06¹⁰ an hour, less than that earned by several other department employees.¹¹ He usually works 40 hours a week which includes two nights and one out of seven Sundays.¹² Neither Smith nor Haywood works those nights and Sundays when Maul is at the store. Maul spends approximately 80 percent of his worktime on the delivery desk and is responsible for resolving disputes involving shipment of big-ticket items to the store's customers. Maul spends the remainder of his worktime as needed in the Department.¹³ Irene Carlin, Dominick DeFeo, and Gloria Zaccarelli, 4C department employees assigned to the delivery office, also resolve shipping disputes, and have desks in the same area as Maul. Smith, Maul, Haywood, Carlin, DeFeo, Zaccarelli, and Romona Van Horn¹⁴ are the only em-

ployees besides Flippen permitted to call Sears' King of Prussia distribution center to check on deliveries.

The hearing officer found that Maul assigns work to clerks in the 4C department and that these assignments involve making decisions requiring the exercise of independent judgment, i.e., Maul makes on-the-spot decisions on his own which require balancing the customers' needs with the abilities of the 4C employees. The hearing officer further found that not only did the Employer arrange Maul's work schedule so that he would "have the watch" when neither Smith nor Haywood was at work, but that Smith delegated assignments to Maul to investigate and resolve even when Smith was present.

Contrary to the hearing officer, we find the record insufficient to establish that Maul exercises independent judgment in the assignment of work. Flippen testified that there are seven subdivisions within the 4C department: catalogue, front cashiers, input and editing, credit, delivery, ROR¹⁵ and returns, and cashier room. It is undisputed that the work of each of the subdivisions is specialized and Smith makes the job assignments of particular employees to particular subdivisions. As stated above, the great bulk of Maul's work involves resolving delivery problems, and there is no record evidence providing specific incidents where Maul exercised independent judgment in resolving these problems. We also note that 4C employees Carlin, DeFeo, and Zaccarelli also resolve delivery problems, and there is no evidence in the record that Maul's work in this regard involves a greater degree of discretion than the other employees. Indeed, employee Piason testified that he normally sees Carlin about delivery problems.¹⁶ Further, given the assignment by Smith of employees to particular specialties within the 4C department, the record does not support a finding that the assignments Maul makes to other employees are more than routine referrals to specialized employees or that other employees do not make comparable assignments, even when neither Smith nor Haywood is present. We find therefore that the record does not establish that Maul's assignment of work in-

¹⁵ ROR (record of return) refers to items which require store pickup because they are too heavy for the customer to return.

¹⁶ Piason testified that on one occasion he had called Smith about a customer complaint involving the delivery of a damaged refrigerator. In response, Smith told Piason that he was busy with five other calls and that Maul could handle the problem. Piason asked whether Maul had authority to handle the customer complaint, and Smith replied, "[h]e has the same authority as I do in that office." In his report, the hearing office noted that although Smith had attended almost the entire hearing, the Employer chose not to call him to rebut Piason's testimony with respect to Maul's assignment authority. In light of the Employer's failure to have Smith rebut Piason's testimony, the hearing officer drew the inference that had Smith been called, he would not have contradicted Piason's testimony.

We find that Piason's testimony, standing alone, is insufficient to establish that Maul exercised independent judgment in resolving this or other customer complaints or that Maul's authority was in any way greater than that of the other employees who resolved such complaints.

⁸ The "4C" Department includes catalogue, cashiering, credit, and customer services.

⁹ The parties stipulated that Haywood is a supervisor within the meaning of the Act.

¹⁰ The hearing officer incorrectly stated that Maul earned \$8.80 an hour.

¹¹ Irene Carlin earns \$9.48 an hour; Nancy Lacy, \$8.52 an hour; Gloria Zaccarelli, \$8.30 an hour; and Patty Muggleberg, \$8.07 an hour.

¹² Smith and Haywood also work one out of seven Sundays.

¹³ Maul is a longtime 4C department employee and is familiar with many aspects of its operations.

¹⁴ Van Horn is a part-time employee assigned to "special accounts."

volves the exercise of independent judgment and, accordingly, we overrule the challenge to his ballot.

4. The status of Rose Maul

Rose Maul is lead cashier in the store's cashier operation.¹⁷ She is one of five part-time employees who work in the cash room, counting money from the cash register, preparing fund bags, bank deposits, and checks for issuance, ordering change the store requires, and tallying for the end-of-the month reports submitted by the store's various departments. Maul performs the same work as the other cash room employees, except that, with Flippen's approval, she has the authority to issue a check on the store's behalf and prepare the work schedule of the cash room employees. As with the other departments, the preparation of the work schedule involves Flippen's determination of the budget for employees' wages and Smith's determination of the cash room coverage and the number of hours each cash room employee will work. Maul then consults with the employees to ascertain their availability and prepares the work schedule in accord with Smith's instructions.

In finding Maul to be a supervisor, the hearing officer relied solely on Maul's role in scheduling employees. In the absence of evidence that Smith or Haywood played an active role in resolving employee complaints regarding scheduling, he found that Maul "effectively determined the scheduled days and hours of work for the cashroom employees."

We disagree. As we have noted in our discussion of other departments, there is no evidence that employee availability causes scheduling conflicts or that Maul in fact resolves any conflicts that do arise. In the absence of any evidence that Maul exercises independent judgment in scheduling employees, we find that Maul is not a supervisor within the meaning of the Act and we overrule the challenge to her ballot.

5. The status of Susan McGowan

Susan McGowan is a personnel specialist in the personnel department, which is part of the RGO under Feneli. She is a part-time employee and works Monday through Friday during the day and occasionally on Saturdays. In addition to McGowan, the other personnel employees are Jean Ford, Jeff Reahm, and on occasion, Sharon Pratt, Pam Terry, and Nancy Ellis. Each of the personnel employees have specific duties.¹⁸ McGowan provides the Store employees with benefit information and is responsible for alerting the employees to file the benefit forms in connection with the

Employer's benefit programs, which she collects and processes. She receives, reviews, and compiles the employee work schedules for the other store divisions and is involved in the store's recruiting program, receiving the "need" sheets from divisions that have received Flippen's approval for hiring employees and arranging for the placement of want ads in the newspapers.

Personnel procedures are uniform throughout the store. When employees call the store to report that they will be absent, they are connected to the Personnel Department. The call is usually directed to the phone on McGowan's desk; however, if McGowan is not at her desk, it will be answered by Ford or Reahm. Employees seeking permission to leave the store before the end of his or her scheduled shift notify the personnel department, which records the request so that in the event of an emergency, the Employer will know which employees are in the store. Personnel employees Ellis, Ford, McGowan, or Reahm will question the departing employee as to: (1) why the employee is leaving the store; (2) if the employee has informed his or her manager of the departure; (3) if there is coverage in the employee's department; and (4) if there is no coverage in the employee's department, if the employee is willing to stay in that department until coverage is arranged. If there is a coverage problem, then the personnel employee can resolve the problem by moving an extra employee from one area of a department to another. However, where it would be necessary to move an employee from one department to another, the personnel employee would first seek permission of a checklist manager. Although the personnel employees do not have authority to prohibit an employee from leaving the store, it is not the Employer's practice to permit scheduled employees to leave work early for just any reason. Where the personnel employee has determined that an employee wants to leave early for frivolous reasons, the employee's checklist manager would be notified and would make the appropriate resolution.

The hearing officer found that McGowan exercised independent judgment in the scheduling of the personnel employees and the PBX operators and in releasing employees from the store. We disagree.

As to scheduling employees, we note that there is no testimony in the record regarding the process by which the scheduling of the personnel employees and PBX operators is determined.¹⁹ As we have noted above, in the absence of any specific evidence that McGowan in fact exercised any independent judgment in preparing the weekly schedule, the hearing officer's "inference" that she does cannot be sustained.

Similarly, the hearing officer's finding that McGowan exercised independent judgment in releasing

¹⁷ The cashier operation is included in the 4C department under Checklist Manager Smith and Supervisor Haywood. The cashier operation includes the counter where customers settle their accounts and the cash room where the store's safe is located.

¹⁸ There are four desks in the personnel department. McGowan, Ford, and Reahm work at assigned desks and one desk remains unassigned.

¹⁹ The only evidence introduced pertaining to this issue was one weekly schedule which was signed by McGowan.

employees is unsupported by the record. McGowan, like the other personnel department employees, followed the store's stated procedures and policies whenever she was notified by an employee that he or she wanted to leave work early, and as the hearing officer found, "routine excuses such as sickness and McGowan's own common sense likely go a long way in narrowing the discretion exercised by McGowan." Although the hearing officer found that a "gray area" existed in which McGowan "would make the call" on whether an employee could leave, the record does not suggest that McGowan's assessment of the situation was anything more than her application of the Employer's set procedures and policies, requiring no exercise of independent judgment. Further, there is no evidence to suggest that McGowan's role in the releasing of employees was any different from that of other personnel department employees, who voted in the election without challenge.

Under these circumstances, we find insufficient evidence to establish that McGowan was a supervisor within the meaning of the Act, and we accordingly overrule the challenge to her ballot.

6. The status of William Weaver

Weaver is classified as a lead mechanic and reports to Checklist Manager Troy Olsen in charge of the auto center's back shop. Weaver is a full-time employee and earns \$13.39 an hour, less than mechanic Ray Bartling, who earns \$13.88 an hour, Julie Conrad, who earns \$13.82 an hour, and Skip Goller, who earns \$13.79 an hour. Weaver spends a substantial amount of his time assisting mechanics with difficult mechanical problems. He also works at the greeter/dispatcher counter²⁰ and works on customer vehicles.

The hearing officer found that work in the back shop is usually assigned by the greeter/dispatcher to mechanics based on the mechanics' specialties,²¹ and that therefore the assignment of particular jobs to mechanics is routine. However, noting that each mechanic possesses varying numbers of specialties and that the assignment of a particular mechanic also requires consideration of what other service must be performed on the car and when the car must be ready for return to the customer, the hearing officer concluded that some repair jobs presented assignment issues that required independent judgment. Based on Weaver's being "intimately involved in the progress of the work in the shop," his work at the greeter/dispatcher counter, and his role in recalling assignments and making reassignments to the mechanics, the hearing officer found that Weaver "exercises independent judgment in the as-

signment of work in the back shop." The hearing officer further found that because Weaver worked 1 day a week when Olsen was not present and 1 night a week when Olsen and Auto Center Sales Manager John Coyle were not present, and because he was "in charge" of the auto center at least one Sunday in five, Weaver "on a regular basis fills the role of assuring the smooth flow of work in the back shop [—a] role that . . . requires the exercise of independent judgment in the assignment of work."

Contrary to the hearing officer, we find the record evidence insufficient to establish that Weaver exercises independent judgment in the assignment of work.

Initially, we note the hearing officer's observation that "[t]here was not an abundance of record testimony as to the duties Weaver performs." And at a subsequent point in his report the hearing officer stated that the record "does not include an abundance of specificity as to the circumstance when W. Weaver makes . . . reassignments." As we have noted supra, the hearing officer's conclusions are not supported by testimony providing specific incidents of Weaver's alleged exercise of independent judgment in the assignment of work. To the contrary, the hearing officer acknowledged that the record reflects that "typically the assignment of particular jobs to mechanics is often routine" and that "Olsen, not Weaver, determines the specialties of each mechanic, and the work is assigned to the mechanics consistent with the [established] procedure. . . ." Under these circumstances, and in the absence of specific supporting evidence, the hearing officer's conclusion that Weaver exercises independent judgment in the assignment and reassignment of work appears to be mere supposition. It is at least equally plausible that the role Weaver plays in the assignment and reassignment of work flows from his being an experienced, lead mechanic, which, without evidence of the exercise of independent judgment, does not support a finding of supervisory status. See *Sears, Roebuck & Co.*, 292 NLRB 753 (1989). Similarly, in the absence of any specific evidence that Weaver exercised any independent judgment in the assignment and reassignment of work when Coyle or Olsen was absent, the hearing officer's finding in this regard is seriously undermined, especially given his other findings that Weaver's actual regular substitution for Olsen is "somewhat limited," and that Coyle "does appear to be only a phone call away."

For these reasons, we find the record evidence insufficient to establish that Weaver exercises independent judgment in the assignment of work, and we overrule the challenge to his ballot.

7. The status of Bernie Welcz

Bernie Welcz is classified as a sales supervisor in the store's auto center, and works under Coyle. Welcz

²⁰The greeter/dispatcher questions the customer as to needed automobile repairs and records this information on a card which is referred to the appropriate mechanic who will do the work.

²¹Checklist Manager Olsen determines the specialty of each mechanic in the back shop.

is hourly paid, does not receive a commission, and earns \$11 an hour. Four employees in the auto center earn more.²² The majority of Welcz' time is spent on merchandising functions, such as making sure the sale signs are up, receiving and counting merchandise, ensuring that there is merchandise on the center's selling floor, and stocking merchandise on the selling floor as it is needed. The remainder of his time is spent covering for greeter/dispatchers who have gone to lunch or have taken a break and dealing with customers' problems. Welcz also writes out the work schedules for the auto center sales employees and service advisers.

Following store procedure, after Flippen and Coyle determine the auto center employee budget, Coyle allocates the funding for each of the auto center areas,²³ and determines the number of employees to be scheduled and the hours each of them will work. Welcz schedules the sales employees and service advisers taking into consideration Coyle's determinations and the employees' preferences and availability. The schedule usually covers a 2-week period and employees are expected to submit requests to Welcz for days off on the Monday before the beginning of the schedule. Employees will often arrange hours among themselves and seek oral approval for changes first from Coyle, and if he is absent, from Welcz. Welcz reviews the employees' requests and attempts to write a schedule which will accommodate the employees' requests with Coyle's requirements. Welcz then submits the schedule to Coyle for Coyle's approval. Coyle resolves employee problems or complaints with the schedule.

The hearing officer found Welcz to be a supervisor, relying solely on Welcz' role in scheduling sales employees and service advisers. He found that Coyle assigned Welcz the task of receiving and keeping track of employee requests for particular hours of work and made him responsible for incorporating the employees' varying requests into a satisfactory schedule. Moreover, the hearing officer found that Welcz had to adjust the schedule to conform to differing budget and coverage decisions. Although the hearing officer acknowledged that Coyle must approve the schedule before it becomes final, he found that there was no evidence that Coyle independently investigated the appropriateness of Welcz' recommended schedule before granting approval. The hearing officer also acknowledged that employees would go to Coyle with their scheduling complaints and that Coyle was available to overrule Welcz' recommendations, but found that Welcz made the decisions "as to who will work when."

²² Bob Donnell earns \$16.81 an hour, Butch Hayes \$13.64 an hour, Ed Vezinho \$13.41 an hour, and Sam DeFilce \$12.68 an hour.

²³ The Auto Center consists of three principal parts: the selling floor; an automobile service area known as the back shop; and a stockroom. Coyle and Olsen, back shop manager, write the work schedules for the back shop and the stockroom employees.

Contrary to the hearing officer, we find that Welcz' scheduling of the auto center sales employees and service advisers does not involve the exercise of independent judgment. As in the case of other departments, there is no evidence that the availability of employees varied from week to week or that Welcz exercised independent judgment in scheduling employees. Indeed, employee Drena Garrett testified that her availability did not change from week to week and that if a change was necessary, such as a day off, she would find another employee with whom to switch. Further, it appears from the record that employees would seek Coyle's approval for schedule changes and only if he was not present would they check with Welcz. Under these circumstances, and in light of the hearing officer's findings that Coyle must approve Welcz' proposed schedule and determine if the schedule should be amended, we find no record support for the hearing officer's finding that Welcz' scheduling role required the exercise of independent judgment. Accordingly, we overrule the challenge to Welcz' ballot.

8. The status of Karen Wimberg

Karen Wimberg is classified lead²⁴ development coordinator in the store's home improvements department (HIPS) under Sales Checklist Manager Russ Lindsay. She is a full-time employee earning \$7.02 an hour. Her work includes compiling statistics on developing and collecting leads and following up on how well the sales employees handle the leads. She takes calls from customers who are considering home improvements and schedules sales employees to call on these customers. Although Wimberg spends nearly all her time in the HIPS office, she does at times visit the HIPS booth located on the selling floor where she instructs the booth employees as to how to answer customers' questions effectively and use the Employer's literature relating to home improvements. In addition, Wimberg drafts the schedule for the HIPS office, which includes three employees in addition to herself, and also schedules the three booth employees. Lindsay determines the coverage, and Wimberg drafts the schedule consistent with Lindsay's determination. Wimberg also assists Lindsay with the paperwork involving the sales employees.

The hearing officer found that Wimberg is a supervisor within the meaning of Section 2(11). He found that Lindsay did not actively supervise the clerical employees in the HIPS office and the coordinators in the booth and that Wimberg directed the day-to-day activities of these employees, who perceived Wimberg as their supervisor. Although the hearing officer acknowledged that in referring leads to outside sales employees, all the employees in the HIPS office followed an

²⁴ The word "lead" in her title refers to inquiries from customers about home improvements.

objective procedure, he concluded that the work was not routine and that Wimberg “necessarily exercises” independent judgment in instructing the clerical employees in this regard. The hearing officer also found that although Wimberg received guidance from Lindsay in preparing the schedules for the HIPS office and booth employees, it was Wimberg who actually scheduled the employees. The hearing officer further found that Wimberg received and acted on employees’ requests as to changes in hours of work and that Wimberg approved the vacations of HIPS office and booth employees. Finally, the hearing officer noted that Wimberg’s role in an employee’s hiring interview and her recommended approval of a sales employee’s travel reimbursement request indicated that Lindsay typically delegated to Wimberg responsibility as to the supervision of the unit employees.

We find, contrary to the hearing officer, that there is insufficient evidence in the record to establish that Wimberg is a supervisor. Although Wimberg directs the day-to-day activities of the HIPS office employees and booth coordinators, there is no evidence that she exercises independent judgment. All the office employees and coordinators perform the same work and where is an objective system for the office employees to follow to determine which outside sales persons will be referred a lead. As to the scheduling of the HIPS office employees and booth coordinators, Lindsay, like the other checklist managers, determines the coverage for the office and booth employees, and Wimberg writes up the schedule in accord with Lindsay’s instructions. There is no evidence that availability of employees varies from week to week or that when changes are necessary, Wimberg, and not Lindsay, resolves them.²⁵ Further, with respect to the hearing offi-

²⁵ Contrary to the hearing officer, we do not find that the testimony of employee Mary Beth Fine supports a finding that Wimberg exercises independent judgment in scheduling employees. Fine testified that at her hiring interview Wimberg indicated that Fine would work 20 hours a week. Fine stated that she only wanted to work about 10 hours a week. Wimberg agreed to try to accommodate Fine’s request. There is no evidence in the record to suggest that the subsequent decision to accommodate Fine’s request was made by Wimberg rather than Lindsay.

Q. Now, let me direct your attention to the time of the election and shortly before that could you describe what you know of Ms. Wimberg’s duties during that time?

cer’s finding that Wimberg approves the vacation requests of the office and booth employees, the hearing officer relied on the following portion of HIPS employee Natale Sellen’s testimony:

As we have noted supra, such conclusionary statements, without supporting evidence, are not sufficient to establish supervisory authority. We also note that the hearing officer stated in a prior part of his report that it was the practice in the store for checklist managers to approve employees’ vacation requests. There is nothing in the record to indicate that the HIPS department operated differently from the other departments with respect to scheduling vacations. Finally, there is no evidence detailing Wimberg’s role in the hiring of Fine or her approval of a sales employee’s travel reimbursement. Without such evidence, we cannot conclude that Wimberg exercised supervisory authority. Accordingly, we find that Wimberg is not a supervisor within the meaning of Section 2(11) of the Act and overrule the challenge to her ballot.

DIRECTION

IT IS DIRECTED that the Regional Director shall, within 10 days from the date of this Decision, Direction, and Order, open and count the ballots of Paul Blankenship, Alice Brown, Marianne Clark, James Donaldson Jr., James Donaldson III, Annette Dunleavy, Mary Beth Fine, Boyd Keele, Cheryl Knowles, Jeffrey Lake, Sue Mark, George Maul, Rose Maul, Susan McGowan, Harrison McKoy, Melissa Payran, Sharon Pratt, Margurite “Peggy” Regal, Linda Vasquez, Mary Lou Watkins, Susan Waters, Augustus “Gus” Weaver, William Weaver, Bernie Welcz, Susan Williams, and Karen Wimberg and prepare and serve on the parties a revised tally of ballots. Thereafter, the Regional Director shall issue the appropriate certification.

ORDER

It is ordered that the proceeding is remanded to the Regional Director.

A. Yes she was a supervisor. She would make up the schedule. She would decide if there was a vacation time off, if there would be anytime that we would change from what days that we would like to have off.